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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,986	05/16/2005	Makoto Fujii	272482US0PCT	1900
22850 7590 06/13/2007 OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER MERCIER, MELISSA S	
			ART UNIT 1615	PAPER NUMBER
			NOTIFICATION DATE 06/13/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/534,986	Applicant(s) FUJII ET AL.	
	Examiner Melissa S. Mercier	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Summary

Receipt of Applicants Remarks and Amended Claims filed on March 13, 2007 is acknowledged.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 1-3 and 6-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shiroyama (EP 1 153 595 A2).

Shiroyama teaches a "clear aqueous composition comprising a ceramide, a long chain fatty acid having 12-24 carbon atoms, a nonionic surfactant, and water. The composition is useful for cosmetics" (abstract). Isostearic acid is disclosed as a suitable long chain fatty acid. Shiroyama further teaches the addition of a sterol compound, such as cholesterol (paragraph 0013).

Regarding Claim 2, polyoxyethylene hydrogenated castor oil is disclosed as the nonionic surfactant (paragraph 0013).

Regarding Claims 3 and 13, Shiroyama discloses, the weight ratios of ceramide to the long chain fatty acid is 20:1 to 1:3, while the reference does not teach a sterol and fatty acid combined within the weight ratios, it would be within the knowledge of a person of ordinary skill in this art to expand upon the teachings of Shiroyama in order to produce a product with the desired properties. Shiroyama teaches the effects of adding

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too much ceramide (not economical and does not improve stability), too much fatty acid component (stability of the system deteriorates). Applicant would have the ability to modify the amounts of each component to yield a suitable product through routine experimentation with the teachings of Shiroyama.

Regarding Claim 6, Shiroyama does not specifically disclose the use of polyoxyethylene (60) hydrogenated castor oil, however, he does disclose suitable nonionic surfactants can include polyoxyethylene hydrogenated castor oil derivatives. It would be within the knowledge of a person of ordinary skill in the art to choose a derivative that would give the qualities, properties and results desired.

Shiroyama does not disclose a mean particle diameter for the emulsion. However, it would have been within the knowledge of the person of ordinary skill in this art to adjust and set the desired particle size in order to make an emulsion, which would meet their desired qualities and properties.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have expanded upon the teachings of Shiroyama in order to create a semitransparent cosmetic composition which is excellent in clearness and feel of use, because Shiroyama's preferred embodiment discloses, a clear aqueous ceramide composition comprising a lipid composition comprising a ceramide, isostearic acid, at least one polyoxyethylene hydrogenated castor oil, water, a sterol and a polyhydric alcohol. It is noted that applicant utilizes the terminology "comprising" in claim 1, which would allow for the inclusion of additional components, such as the polyhydric alcohol (paragraph 0038).

The instant claims differ from the references only in the specific percentage selected for the compositions. However, It would have been deemed prima Facie obvious to one having ordinary skill in the art at the time of the invention to optimize the amount of non-ionic surfactants, and ratios of components, to prepare a composition because the determination of a specific percentage having the optimum effect is well within the level of one having ordinary skill in the art, and the artisan would be motivated to determine optimum amounts to get the desired effect of the active compounds. Therefore, the invention as Whole has been prima face obvious to one of ordinary skill in the art at the time the invention was made.

Response to Arguments

Applicant's arguments filed March 13, 2007 have been fully considered but they are not persuasive. Applicant argues the issue is not whether one skilled in the art, given the motivation to convert the clear or transparent composition of Shiroyama et al., would know how to do so. Rather, the issue is whether such motivation exists in the first instance. Without the present disclosure as a guide, there would have been no motivation to convert the clear or transparent composition of Shiroyama et al to a semi-transparent composition. The examiner disagrees. Shiroyama discloses in Table 1 both hydrophilic and lipophilic component. It is the examiners position that since applicant is not claiming specific percentages of components in the base claim, that given the information and directions of Shiroyama's Table 1, regarding clarity, it would be within the knowledge of one of ordinary skill to make a composition with the desired properties.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa S. Mercier whose telephone number is (571) 272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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